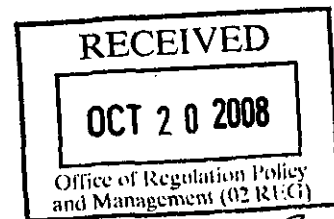


Director, Regulations Management (02 REG)
Department of Veterans Affairs
810 Vermont Ave., N.W.
Room 1068
Washington, DC 20420



Re: Comments in response to "RIN 2900-AM92-VA Acquisition Regulation: Supporting Veteran – Owned and Service Disabled Veteran – Owned Small Business"

What is interesting is that it is 4 years to the date of the signing of E.O. 13360 by President Bush we are now looking to change policies. Four years of trying to convey to the individuals that are involved with the procurement process the importance of this LAW. Four years of policies that have been in place to inhibit or divert opportunities for Disabled Veterans and or Veteran Owned Businesses. These policies continue to increase business of large corporations while small businesses (service disabled or veteran owned), who have meet all the criteria established by these policies, continue to struggle with the current bureaucracy.

Looking at these policies:

1. VA personnel involved in the acquisition process need to become acquainted with the authorities and their responsibility's under P.L. 109-461. We must ensure that our advocacy of veterans extends to veteran entrepreneurs. It is a very simple statement but apparently difficult to accomplish. No one has informed staff at the facility level. Director's of Nursing do not want to evaluate products on the FSS or Standardized Contracts with comments such as "What are the legal ramifications if I do not comply" Anesthesia or Surgical Technicians that order disposable commodity items do not want to make a changes, even with substantial savings. Business as usual. Somebody needs to tell these individuals the importance of this program. Employees need to be fiscally responsible. These products are utilized in the private sector what is the problem with utilization within the VA system.
2. The changes to the VAAR do not address the implementation of the VA strategic plan. As it stands today, once a SDVOSB achieves a FSS the SDVOSB/VOSB loses any preference in relation to the same or a like product on a FSS that is held by a Prime Vendor / Big Business or any businesses that are "NOT SDVOSB / VOSB" who also possesses a FSS contract. A SDVOSB / VOSB should have the SAME preference that is given to them on Open Market Items. The SDVOSB / VOSB has

followed the rules, proven themselves and obtained an FSS contract. Why wouldn't the VA promote and require these proven SDVOSB / VOSB be the #1 source and priority? Is this not the goal of PL 109.461? Without specifically putting SDVOSB / VOSB as the priority to include both standardization contracts and FSS contracts in the VAAR and FAR nothing will change and Big Business / Prime Vendors will still rule over the SDVOSB / VOSBs'. If a SDVOSB / VOSB are not selected, then the awarding contracting officer must justify why another vendor was chosen.

The Proposed change does state:

Section 808.603 Purchase Priorities

We interpret section 8128 and the legislative history to mean that SDVOSBs and VOSBs must receive priority in VA contracting opportunities without regard to other provisions of law concerning contracting preferences. This interpretation conflicts with the current contracting priorities in law and as implemented in the FAR, for Federal agencies buying from FPI. VA finds that section 8128, being directly applicable solely to VA and providing authority without regard to any other provision of law, requires VA contracting officers to have the authority to override other statutory contracting preferences to provide priority to SDVOSBs and VOSBs to meet VA's socioeconomic goals for such concerns. Therefore, proposed section 808.603 is the only means available to VA to implement the requirement in section 8128 that veterans' small businesses have priority in VA acquisitions that would normally be awarded under FPI.

Section 813.106 Soliciting Competition, Evaluation of Quotations or Offers, Award and Documentation

This section would clarify that contracting officers may use other than competitive procedures to enter into a contract with an SDVOSB / VOSB when the amount is less than the simplified acquisition threshold not to exceed \$5 million. Contracting officers would give first consideration to SDVOSBs.

Section 808.603 and 813.106 are in conflict with the VA strategic plan 2. (e) which was referenced in the proposed change.

Summary: SDVOSB and VOSB should have priority regardless of Open Market, FSS or awarded standardization contracts. Anything less is not in full support of PL109-461 or veterans that the VA exists to serve.

3. The below statement falls short and its intent is an insult to Veterans and their wives who both work to make their company a success.

Revise the eligibility definition for "service-disabled veteran-owned small business concerns" to include a spouse who obtains ownership rights upon the

death of a 100 percent service-disabled veteran or a veteran who died as a direct result of a service-connected injury for a period of 10 years unless the spouse remarries or sells the interest in the business.

Any spouse of a Veteran regardless of percentage should be allowed to continue with the status of the deceased Veteran for the 10 year period or until they remarry or sell the business business.

Issue 4:

819.7103 Non-affiliation.

The determination of affiliation is a function of the Small Business Administration.

Unless specifically specified SBA may classify participants in a Mentor Protégé Program as a Joint Venture. It is noted on the SBA website that the SBA specifically excludes its 8a program from Joint Ventures. If this is not addressed it could undermine the Program by reliance on a SBA definition that has no vested interest in the VA Mentor Protégé programs success or VA Programs in general.

Issue 5:

819.7108 Application process

Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support.

819.7110 Developmental assistance.

The forms of developmental assistance a Mentor can provide to a include, but are not limited to, the following:

- (a) Guidance relating to—
 - (1) Financial management;
 - (2) Organizational management;
 - (3) Overall business management/ planning;
 - (4) Business development; and
 - (5) Technical assistance.
- (b) Loans.
- (c) Rent-free use of facilities and/or equipment.
- (d) Property.
- (e) Temporary assignment of personnel for training.
- (f) Any other types of permissible, mutually beneficial assistance.

Given the Definitions of a Joint Venture by the SBA, it could be argued that a Mentor Protégé program where the participants are classified as a Joint Venture either by their own agreement or by the SBA would fall into the restrictions of a Joint Venture. i.e. 3 bids in 2 years and the 51 / 49 % work and investment. It is not the intent of the Mentor Protégé program to be restricted by the Joint Venture guidelines.

Comment:

Any Changes to the VAAR and/or FAR are only as good as its implementation and enforcement. Currently the VA states it cannot track who is buying what or from whom. If this is true, the enforcement of such rules is very difficult. If the VA can not track its performance on awards and the subsequent actual purchases, there is no performance process. This encourages business as usual with no or little repercussions for not following through on awards given. (BPAs, National Contracts, FSS schedule compliance, SDVOSB/VOSB etc verses Big Business awards, compliance or ordering with SDVOSB direct verse with Prime Vendors.)

It has also been stated by VA personnel that Contracting Officers and Purchase Card holders are not always aware of Awards or sensitive to SDVOSB /VOSB preferences. Providing an award without educating ALL personnel who purchase a said items or services then tracking and enforcing compliance of the awards or program should be considered unacceptable by the VA.

- 3. Commercial Group Purchasing Organizations (GPOs) and Hospital Groups (IDNs) track this type of data on a regular basis and drive compliance with all their programs. These tracking systems exist commercially and if they are not available to the VA, it should be a priority to implement such as system. Implementation would insure compliance of awards, compliance to the FAR / VAAR as well as provide accountability and a means of enforcing the VA's own policies, regulations and the Law.**

Submitted By:

Jay Waldo, President

Cornerstone Medical Associates, Inc.

3205 Grenada Way

Tampa FL 33618-3005

Phone: 813-334-3160

Email: jwaldo@cornerstonemedical.org